IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

IN RE:	§	
	§	
TEXAS EQUIPMENT COMPANY, INC.,	§	CASE NO. 01-50829-RLJ-7
	§	
Debtor	§	
VAUGHN CULWELL AND CAROLYN CULWELL, Successors to PLAINS FARM SUPPLY, INC.,	§	
	§	
Plaintiffs	§	
	§	
v.	§	ADVERSARY NO. 02-5001
	§	
TEXAS EQUIPMENT COMPANY, INC., WASHINGTON MUTUAL f/k/a BANK UNITED, and YOAKUM COUNTY APPRAISAL DISTRICT,	§	
	§	
Defendants.	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Preliminary Statement

On March 25, 2002, a hearing on the Trustee's Motion to Sell Real and Personal Property and trial of the above styled adversary proceeding were jointly held. By the motion, the Trustee, Max Tarbox, seeks approval to sell real and personal property located at "Lovington Highway, Plains, Yoakum County, Texas - 6.025 acres more or less out of Section 426, Block D, John H. Gibson Survey." Such sale is free and clear of all liens, claims, and encumbrances, with all such liens, claims and encumbrances to attach to the sale's proceeds. The proposed purchase price is $35,000.00; the

purchaser is West Texas Agriplex. The motion also contains a notice setting forth a procedure for competing bids, if any.

Vaughn and Carolyn Culwell (the Culwells) filed their objection to the Trustee's motion contending that they have a superior interest in the property to be sold thereby foreclosing the Trustee's right to sell the property. In addition, the Culwells initiated this adversary proceeding against the Debtor, Texas Equipment Company, Inc., Washington Mutual, and Yoakum County Appraisal District. The Culwells contend they, as successors to their dissolved corporation, Plains Farm Supply, Inc., are entitled to rescind the transaction by which the property was originally conveyed by Plains Farm Supply, Inc. to Texas Equipment Company, Inc. The issues raised by this complaint are properly brought as an adversary proceeding and is the underlying basis for their objections to the Trustee's motion.

Washington Mutual, as successor to Bank United, holds liens against the property subject of the sale, which such liens were granted by Texas Equipment Company in return for financing provided by Bank United. Washington Mutual denies that the Culwells have any interest in the property subject of the motion that is superior to the interest held by Washington Mutual. The Trustee, Max Tarbox, asserts that if title is properly held by Texas Equipment Company, Inc., he has authority to sell the subject property free and clear of any liens, claims, and encumbrances. At trial, the Trustee requested that any approval of sale be conditioned upon the consent of either Washington Mutual or the Culwells, whichever party is deemed to hold the superior interest. If there is no consent from the winning party, the Trustee advised that he would withdraw the motion.

Finally, on the day of trial, the Culwells dismissed the Yoakum County Appraisal District as a defendant, and, during trial, the Culwells' counsel advised that they no longer opposed the Trustee's proposed sale of the personal property. This case, therefore, concerns the real property only.

Findings of Fact

1. Vaughn Culwell, one of Plaintiffs, and an individual named Lloyd Allsup were prior owners of Plains Farm Supply, Inc., which was a Texas corporation that owned and operated a John Deere dealership in Plains, Texas, along with a satellite office in Denver City, Texas. They began this business in 1969 and over the years made various improvements to the physical plant owned by Plains Farm Supply, Inc.

2. In 1987, Vaughn Culwell and his wife, Carolyn, acquired the stock owned by Allsup in Plains Farm Supply, Inc. and continued to operate as a John Deere dealership in both Plains and Denver City until 1992. During the latter part of 1992, Plains agreed to sell all its assets to Texas Equipment Company, Inc., the Debtor herein. The documents evidencing this transaction consist of a Contract of Sale, an Assumption Agreement, a Warranty Deed, and a Bill of Sale. See Plaintiffs' Exs. 2-5.

3. The Contract of Sale states it was executed "on the ___ day of October, 1992, but effective as of the 26th day of September, 1992." It provides that the purchase price of $649,215.94 is satisfied by Texas Equipment Company, Inc., as buyer, assuming various notes under which the indebtedness totals the purchase price of $649,215.94. Plaintiffs' Ex. 2. Paragraph 4 of the Contract of Sale states that the assumed notes are to be secured by a vendor's lien and a deed of trust. *Id.*

4. The Assumption Agreement states it is effective September 26, 1992. According to the acknowledgments, Paul Condit, as President of Texas Equipment Company, Inc., signed the Assumption Agreement on January 30, 1993, and Vaughn Culwell, as President of Plains Farm Supply, Inc., signed the Assumption Agreement on January 25, 1993. It was filed of record in Yoakum County, Texas, on February 15, 1993, and is recorded at volume 104, page 309, of the official public records of Yoakum County, Texas. According to the Assumption Agreement, Texas Equipment Company, Inc., as buyer, assumed the following described obligations:

> a. Note in the original amount of $540,000.00, dated October 1, 1987, executed by Plains Farm Supply Inc., payable to Lloyd Allsup, bearing a variable rate of interest, payable in 300 monthly installments; the unpaid balance is $500,235.00 and Buyer shall assume and pay the payment due on November 1, 1992, and all payments due thereafter. The amount assumed is $500,235.00.
>
> b. Note executed by Plains Farm Supply Inc., payable to Plains State Bank of Plains, Texas, said note being dated August 1, 1979, in the original amount of $150,000.00, bearing interest at the rate of 10% per annum, and said note is payable $1450.00 per month. The amount assumed is $75,575.00.
>
> c. Note executed by Plains Farm Supply Inc., payable to GMAC, dated September 21, 1990, in the original amount of $17,270.88, bearing interest at the rate of 7.9% payable $359.81 per month. The amount assumed is $8,053.67.
>
> d. Notes payable to John Deere Equipment Company described as follows:
>
> > d.1. Note secured by lien on Unix Computer System, dated September 10, 1991, bearing interest at the rate of 10.4% and payable $1,315.84 per month. Amount Assumed is $50,450.79.

d.2. Note secured by lien on R688ST Model Mack Truck, dated April 29, 1991, bearing interest at the rate of 10.4% and payable 563.33 per month. Amount Assumed is $14,901.48

2.2. Although the amounts below are not included in the total of the indebtedness assumed by Buyer, nevertheless Buyer has agreed, and does hereby agree, to assume the liability of Seller to John Deere Company, and Buyer agrees to hold Seller wholly free and harmless of and from any and all liability on the following described items:

e.1: 1990 Model No. 435 Round Baler Serial No. E00435X860232. The amount of the floor plan debt is $7740.45.

e.2: 1989 Model No. 7445 Cotton Stripper Serial No. N07445X006081. The amount of the floor plan debt is $47,101.79.

e.3: 1990 Model No. 7445 Cotton Stripper, Serial No NO7445X008063. The amount of the floor plan debt is $55,859.00.

e.4: 1984 Model No. 4650 Tractor Serial No. RW465P009420. The amount of the floor plan debt is $31,127.56.

Plaintiffs' Ex. 3. According to the testimony of Vaughn Culwell, the sole remaining obligation is the note in the original amount of $540,000.00, executed by Plains Farm Supply, Inc. and made payable to Lloyd Allsup.

5. The Warranty Deed is dated September 26, 1992; it was acknowledged on January 25, 1993. It was filed of record on February 9, 1993, at volume 104, page 118, of the official public records of Yoakum County, Texas. Plaintiffs' Ex. 4.

6. The Bill of Sale is also dated September 26, 1992, and is signed by Vaughn Culwell, as President of Plains Farm Supply, Inc. It contains an acknowledgment stating that it was acknowledged

January 25, 1993. It was filed of record on February 9, 1993, at volume 104, page 120, of the official public records of Yoakum County, Texas.

7. The Contract of Sale provides that in the event of default by the purchaser Texas Equipment Company, Inc., Plains Farm Supply, Inc., as seller, may "(a) bring suit for damages against Purchaser or (b) enforce specific performance of this Contract or (c) retain all of the good faith deposit . . . ." In contrast, the Assumption Agreement provides that in the event of Texas Equipment Company, Inc.'s default in making payments on the assumed indebtedness

> then Seller [Plains Farm Supply, Inc.] . . . shall have the right to notify Buyer in writing, by Certified Mail, of such default, and Buyer shall have ten (10) days to cure such default. If such default is not cured within such ten (10) day period, thereafter Seller [Plains Farm Supply, Inc.] . . . shall have the right to pay such delinquent payment, and any such delinquent payment made because of the default of Buyer shall bear interest, at the rate of 18% per annum, from the date it is paid by Seller until such defaulted payment is repaid by Buyer to Seller. *If such default is not cured with 90 days from the date such default occurs, or if more than two (2) payments become delinquent (whether to the same or different creditors) then Seller shall have the right to bring a suit in the District Court of Yoakum County, Texas, either for damages, or to cancel the Bill of Sale and Warranty Deed executed to close out the Contract of Sale hereinabove referred to.* In the event of default Buyer [Texas Equipment Company, Inc.] . . . shall be responsible and liable for all attorneys fees incurred by Seller [Plains Farm Supply, Inc.] . . . by virtue of such default.

Plaintiffs' Ex. 3 (emphasis added).

8. In September, 1998, Plains Farm Supply, Inc. apparently liquidated and dissolved as evidenced by the Articles of Dissolution filed with the Secretary of State of Texas. Plaintiffs' Exs. 7-8.

9. Given the dissolution of Plains Farm Supply, Inc., the Culwells are successors in interest to Plains Farm Supply, Inc.

10. On June 24, 1999, Bank United, predecessor to Washington Mutual, entered into a real estate financing transaction with Texas Equipment Company, Inc., in which the bank loaned Texas Equipment the sums of $4.93 million and $1.75 million. These loans represented the refinancing of existing debts and the extension of additional credit to Texas Equipment Company, Inc. On June 24, 1999, in order to secure its debt, Texas Equipment Company, Inc. granted the Bank United Deeds of Trust on its dealership sites, including Deeds of Trust on the Yoakum County properties. The Deeds of Trust on the Denver City, Texas, dealership were filed on July 1, 1999, in volume 198, page 608, and November 19, 1999, in volume 202, page 870 of the Yoakum County deed records (re-recorded on June 28, 2000, in volume 210, page 297). The Deed of Trust on the Plains, Texas, property was filed on July 1, 1999, in volume 198, page 641 of the Yoakum County deed records (re-recorded on July 20, 2000, in volume 211, page 244). Joint Pre-Trial Order, Stip. 7; Wash. Mut. Ex. 1.

11. Washington Mutual, as successor to Bank United, gave value for its Deeds of Trust.

12. Washington Mutual is successor in interest to Bank United.

13. Texas Equipment Company, Inc. defaulted in making payments on the assumed note to Allsup. As of July 5, 2001, the remaining principal balance on the note was $262,354.79, with interest continuing to accrue. Vaughn Culwell testified that he had made payments on the note since such default. No evidence was submitted reflecting the current principal balance on the note.

14. On July 5, 2001, Texas Equipment Company, Inc. filed a voluntary petition under Chapter 11 of the Bankruptcy Code. Max Tarbox was appointed Chapter 7 Trustee on July 31, 2001, and on September 26, 2001, the case was converted to Chapter 7.

15. If appropriate, these findings of fact shall be considered conclusions of law.

Conclusions of Law

16. The court has jurisdiction over this matter under 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(1).

17. The court must determine whether the Assumption Agreement contains a valid condition subsequent under Texas law thereby enabling the Culwells to rescind the warranty deed and reenter the property. The Assumption Agreement provides that the Culwells (as successors to Plains Farm Supply, Inc.) must file suit to cancel the deed. The asserted condition in the Assumption Agreement does not, therefore, work to automatically divest the grantee of the property; if the conveyance is qualified in any way, it is qualified by a potential condition subsequent. *See Deviney v. Nationsbank*, 993 S.W.2d 443, 448 (Tex. App. – Waco 1999, pet. denied).

18. A condition subsequent may be created in a document collateral to the deed itself. *See Zapata v. Torres*, 464 S.W.2d 926 (Tex. Civ. App. – Dallas 1971, no writ); *Arnold v. Scharff*, 210 S.W. 326 (Tex. Civ. App. – Fort Worth 1918, writ ref'd). In *Zapata*, the deed itself did not contain a condition subsequent. *Zapata*, 464 S.W.2d at 928. As with the warranty deed here, the deed at issue in *Zapata* recited that an Assumption Agreement between the grantor and the grantee was given in consideration for the deed. *See id*. Although the court concluded that the transaction there did not create a condition subsequent, its decision did not turn on whether the deed, as opposed to the Assumption Agreement, contained the condition. The court said that "the Zapatas' agreement to assume the note is not couched in language making it a condition subsequent since it contains no language reserving to Garcia the right to terminate the estate." *Id*. at 929. The court therefore inferred that a valid condition subsequent can be created in a document collateral to a deed if the language of

that document is sufficient to create a condition subsequent. *See id*. at 929. Similarly, the grantor in *Arnold* issued a deed conveying fee simple title, but a separate, recorded contract purported to create a condition subsequent. *Arnold*, 210 S.W. at 327. The court held that the grantor could have defeated the estate pursuant to the condition subsequent in the collateral contract, but such right was waived by the grantor. *See id*. at 329.

19. Texas law holds that "[a]s a general rule, several instruments comprising a single transaction are to be construed together." *Jones v. Fuller*, 856 S.W.2d 597, 601 (Tex. App. – Waco 1993, writ denied). *See also Terrell v. Graham*, 576 S.W.2d 610, 611 (Tex. 1979); *Trustees of the Casa View Assembly of God Church v. Williams*, 414 S.W.2d 697, 701 (Tex. Civ. App. – Austin 1967, no writ). As stated by the Supreme Court of Texas, "[s]eparate instruments contemporaneously executed as part of the same transaction and relating to the same subject matter may be construed together as a single instrument . . . even though the result be to modify one of the instruments which, standing alone, would have a different construction. Thus a deed absolute in form, substance and effect has been held to be wholly conditional, the condition being express in a contemporaneous contract." *Rudes v. Field*, 204 S.W.2d 5, 7 (Tex. 1947)(internal quotations and citations omitted).

20. The Contract of Sale, the Assumption Agreement, and the Warranty Deed evidence a single transaction and the language of the Assumption Agreement is considered as a single provision within the context of an overall agreement. *See id*.

21. A valid condition subsequent enables the grantor to defeat the estate upon the occurrence of the condition, whereas a covenant merely provides the grantor with a right to monetary damages or injunctive relief - even if the covenant provides that the grantor may regain title to the estate. *See*

Humphrey v. C.G. Jung Educ. Ctr. of Houston, Tex., 714 F.2d 477, 480 (5th Cir. 1983) (Under Texas law, the only remedies for breach of a covenant are monetary damages and injunctive relief. Forfeiture is not an available remedy for breach of a covenant, and language in a deed may be read as a covenant even if it specifically provides for reverter or a right of reentry); *Zapata*, 464 S.W.2d at 929; *Dilbeck v. Bill Gaynier Inc.*, 368 S.W.2d 804, 807 (Tex. Civ. App. – Dallas 1963, writ ref'd n.r.e.) ("The chief distinction between a covenant and a condition subsequent has to do with the remedy in the event of a breach. If a covenant, the remedy is an action for damages, but the breach of a condition subsequent results in a forfeiture of the estate"). The validity of a condition subsequent is a question of law for the court to decide. *See Venture v. Burns*, 1990 WL 71338 *1 (Tex. App. – Houston [14th Dist.] 1990, no writ).

22. Conditions subsequent resulting in forfeiture are not favored by Texas law. *See Humphrey*, 714 F.2d at 480; *Hearne v. Bradshaw*, 312 S.W.2d 948, 951 (Tex. 1958). *See also Humphrey*, 714 F.2d at 480 ("[t]he courts will not declare a forfeiture unless they are compelled to do so by language that will admit of but one construction"); *Hearne*, 312 S.W.2d at 951 ("the promise or obligation of the grantee will be construed as a covenant unless an intention to create a conditional estate is clearly and unequivocally revealed by the language of the instrument. In cases where the intention is doubtful, the stipulation is treated as a covenant rather than a condition subsequent with the right to defeat the conveyance"). No particular words are required, however, to create a condition subsequent. *See Dilbeck v. Gaynier Inc.*, 368 S.W.2d 804, 807 (Tex. Civ. App. – Dallas 1963, writ ref'd n.r.e.). Ambiguous language is construed against the grantor. *See id*. The key to the issue of whether a condition subsequent exists is whether the language in the instrument unambiguously and

unequivocally reveals an intent to create a conditional estate. *See Humphrey*, 714 F.2d at 480; *Hearne*, 312 S.W.2d at 951. "Although conditions subsequent are not favored, however, 'Where the language creating the condition is clear and specific it will be enforced.'" *Humphrey*, 714 F.2d at 481, *quoting Hudson v. Caffey*, 179 S.W.2d 1017, 1019 (Tex. Civ. App. – Texarkana 1944, writ ref'd w.o.m.).

23. The few published cases that have interpreted purported conditions subsequent shed light on the high bar that must be cleared before a court will construe an agreement as a condition subsequent. The Fifth Circuit considered an agreement that stated, "should the owner of the land hereby conveyed at any time fail to comply with any of the provisions of this covenant, Grantors herein . . . may by instituting suit, enforce compliance therewith, or restrain the further violation thereof, or said land shall revert to the Grantors herein, should they so elect." *Humphrey*, 714 F.2d at 479. This language created a covenant only, and forfeiture was not available to the grantors. *See id*. at 483. The Fifth Circuit, applying Texas law, considered two issues most important: (1) that the agreement used the word "covenant;" and (2) that the agreement provided the grantors with an election of remedies. *See id*. at 481-82. While neither the word "covenant" nor "condition" is alone determinative of the issue, the fact that one of these words is used in place of the other is strong indication that ambiguity exists. *See id*.

Similarly, the Fort Worth Court of Appeals considered an agreement which stated as follows:

> In case the said grantee, or his heirs, executors, administrators or assigns, shall ever violate any one of said conditions contained herein and made a part of the covenants of this deed, the said land and all improvements therein shall immediately revert to and become the property of the grantor herein and its successors or assigns, and it shall be

> lawful for said grantor and its successors or assigns to re-enter said premises as in its first and former estate
>
> * * *
>
> The said grantee herein, for himself and his heirs, executors, administrators and assigns, does agree with W. F. White Land Company and its successors that the conditions herein contained are intended to and shall run with the land, and that should the grantee, his heirs, executors, administrators or assigns, or any person claiming under him, violate any of the foregoing covenants, then W. F. White Land Company, or its successors, or any owner of any lot conveyed herein, shall have the right to enjoin the doing of same, and in the event the violation has already taken place, that then such remedy shall extend to the removal of the improvements placed on said premises in violation of any covenant herein.

W. F. White Land Co. v. Christenson, 14 S.W.2d 369, 370 (Tex. Civ. App. – Fort Worth 1929, no writ). Even though the first of the above paragraphs speaks in unequivocal terms, the court found ambiguity in the second paragraph because of its reference to "covenants," and because the grantor had an election of remedies: "[i]t cannot be doubted that by that language the grantor was given a remedy for a violation of any of the restrictions contained in the deed, which are there designated as covenants. In view of the right so given, the grantor is in no position to claim the harsher remedy of forfeiture of title." *Id*. at 372.

The Austin Court of Appeals construed an agreement that read, "the further covenant, consideration and condition is that the following restrictions shall in all things be observed, followed and complied with . . . in case of any violation thereof the title to said premises shall, without entry or suit, immediately revert to and vest in the grantors herein, their heirs and assigns, and the conveyance hereunder shall be null and void." *Malloy v. Newman*, 649 S.W.2d 155, 159 (Tex. App. – Austin 1983, no writ). The court construed this language as a covenant because the deed referred to the restrictions as both covenants and conditions, thereby creating an ambiguity. *See id*.

24. The above cases reveal that language purporting to create a condition subsequent must indeed be wholly unambiguous and unequivocal. *See Hearne v. Bradshaw*, 312 S.W.2d 948, 951 (Tex. 1958). Reference to "covenant" and the availability of an election of remedies creates sufficient ambiguity to destroy a purported condition subsequent; use of the word "condition" in conjunction with the word "covenant" likewise creates ambiguity.

25. The Assumption Agreement in the present case does not, in the default provision, refer to either "covenant" or "condition." It states, in pertinent part:

> If such default is not cured with [sic] 90 days from the date such default occurs, or if more than two (2) payments become delinquent . . . then Seller shall have the right to bring a suit . . . either for damages, or to cancel the Bill of Sale and Warranty Deed executed to close out the Contract of Sale hereinabove referred to.

That this provision does not use the word "covenant" tends to favor interpreting the agreement as a condition. However, absence of the term "condition," while not in and of itself determinative, is indication that a condition was not intended. *See Dilbeck v. Bill Gaynier Inc.*, 368 S.W.2d 804, 807 (Tex. Civ. App. – Dallas 1963, writ ref'd n.r.e.).

26. "[T]he promise or obligation of the grantee will be construed as a covenant unless an *intention to create a conditional estate* is clearly and unequivocally revealed by the language of the instrument. In cases where the intention is doubtful, the stipulation is treated as a covenant rather than a condition subsequent with the right to defeat the conveyance." *See Hearne v. Bradshaw*, 312 S.W.2d 948, 951 (Tex. 1958)(emphasis added).

27. The election of remedies contained in the Assumption Agreement reveals the intent that the estate *may* be forfeited at the election of the grantor - and therefore the estate *may* be conditional.

28. The Assumption Agreement does not unequivocally condition the estate. Instead, it indicates that the estate may be forfeited, at the election of the grantor. Thus the estate may or may not be conditional. This ambiguity must be resolved in favor of the grantee and to defeat the purported condition subsequent. *See Humphrey v. C.G. Jung Educ. Ctr. of Houston, Tex.*, 714 F.2d 477, 483 (5th Cir. 1983).

29. The documents evidencing the sale of the real property by Plains Farm Supply, Inc. to Texas Equipment Company, Inc. are inconsistent concerning the Culwells' rights upon a default by Texas Equipment Company, Inc. This creates further ambiguity. Each document is dated September 26, 1992, or is dated *effective* September 26, 1992. The Contract of Sale contemplates that the assumed notes were to be secured by a vendor's lien and a deed of trust, thereby reflecting a traditional financing arrangement. Upon default, Plains (or its successors, the Culwells) could proceed to foreclose such liens. This is inconsistent with the Assumption Agreement which contemplates an election to sue for damages or recission. The Warranty Deed does not limit the estate being conveyed except as to mineral rights and easements and therefore provides no evidence that the conveyance is subject to a condition subsequent.

30. At paragraph 3 of the Assumption Agreement, Texas Equipment Company, Inc. stated that it "agrees to pay all of the obligation" assumed thereunder, and "agrees to be bound by all of the *conditions* and *covenants* contained in each agreement assumed . . . ." (emphasis added). Texas Equipment's obligation to pay is a covenant, the breach of which gives rise to a suit for damages. It is not a condition triggering forfeiture.

31. The Culwells have alternatively argued that they have an equitable vendor's lien on the estate. Texas law provides that "[w]here the purchase money is not paid, but no express lien is reserved in the deed, the vendor has an implied equitable lien which may be established and foreclosed in a suit brought for that purpose." *Zapata v. Torres*, 464 S.W.2d 926, 928 (Tex. Civ. App. – Dallas 1971, no writ). Additionally, "[s]uch an equitable lien may arise from the purchaser's assumption of the vendor's indebtedness to a third party." *Id*. However, when the grantor is indebted to a third party, and the grantee assumes the debt owed to the third party, it is the third party and not the grantor who holds such an equitable lien. *See Delley v. Unknown S'holders of Brotherly and Sisterly Club of Christ*, 509 S.W.2d 709, 714 (Tex. Civ. App. – Tyler 1974, writ ref'd n.r.e.).

32. Even if an equitable lien was created in favor of the Culwells, the Culwells do not have title to the estate that is superior to the title of the grantee. *See Zapata*, 464 S.W.2d at 928-29; *Rindge v. Oliphint*, 62 Tex. 682 (1884); *Waukee v. Hill*, 99 S.W.2d 1047, 1049 (Tex. Civ. App. – El Paso 1936, writ ref'd) ("The deed in this case, being absolute with warranty, the vendors, by its execution, parted with their title and, if the purchase money was in fact unpaid, they retained nothing but an implied vendor's lien, and therefore [grantee] became the holder of the superior title"). "Moreover, assumption by the purchaser of the vendor's indebtedness to a third party does not invoke the superior title doctrine." *Zapata*, 464 S.W.2d at 929. An equitable lien may be inferior in priority to a deed of trust lien, or to similar liens. *See Metropolitan Life Ins. Co. v. Richard Gill Co.*, 303 S.W.2d 501, 504-505 (Tex. Civ. App. – Eastland 1957, writ ref'd n.r.e.) (finding that vendor's lien, deed of trust lien, or purchase money lien was superior to equitable lien in property). *United States v. Grubert*, 191 F. Supp. 326, 328 (S.D. Tex. 1961).

33. The Culwells' claim of an equitable lien cannot defeat the rights of either Texas Equipment Company, Inc. or Washington Mutual.

Conclusion

34. Upon the foregoing findings and conclusions, the court holds that the Culwells hold no interest in the real property sufficient to defeat the interest of either Texas Equipment Company, Inc. or Washington Mutual and therefore the relief requested by the Culwells, both by their complaint and in response to the Trustee's motion, is denied. As requested by Trustee, the Trustee's motion to sell will be granted provided Washington Mutual consents to the sale.

35. All other relief requested by the parties is denied.

36. If appropriate, these conclusions of law shall be considered findings of fact.

37. The court reserves the right to make additional findings and conclusions as may be necessary.

DATED: April 8, 2002.

ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE

The Clerk shall furnish copies to:

Attorney for Plaintiff: Harold H. Pigg , Clifford, Field, Krier, Manning, et al, 2112 Indiana Avenue, Lubbock, TX 79410;

Defendants: Texas Equipment Company, Inc., % Paul Condit, P.O. Box 790, Seminole, TX 79360; and Yoakum County Appraisal District, % Saundra Stephens, 500 10th Street, Plains, TX;

Attorney for Defendant, Washington Mutual: Paul D. Pruitt, 1945 Walnut Hill Ln., Irving, TX 75038;

Attorney for Debtor: Mike Calfin, P.O. Box 737, 1320 Avenue Q, Lubbock, TX 79408;

Chapter 7 Trustee: Max R. Tarbox, 3223 S. Loop 289, Suite 414, Lubbock, TX 79423.